

1 MAYALL, HURLEY, KNUTSEN, SMITH & GREEN  
2 A Professional Corporation  
2453 Grand Canal Boulevard, Second Floor  
Stockton, California 95207-8253  
3 Telephone (209) 477-3833  
MARK S. ADAMS, ESQ.  
4 CA State Bar No. 78706

5 **Attorneys for Plaintiff, Kimberly Beagle**

6

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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 KIMBERLY BEAGLE,

Case No.: CV08-1517-PJH

11 Plaintiff,

12 vs.

13 RITE AID CORPORATION, a corporation;  
14 and DOES 1-100, inclusive,

PLAINTIFF'S REQUEST FOR JUDICIAL  
NOTICE IN OPPOSITION TO MOTION  
TO DISMISS DISABILITY  
HARASSMENT CAUSE OF ACTION FOR  
LACK OF SUBJECT MATTER  
JURISDICTION

15 Defendants.

Date: Wednesday, June 4, 2008

16 Time: 9:00 a.m.

17 Dept.: Courtroom 3, 17<sup>th</sup> Floor

18

19 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

20 Pursuant to Federal Rule of Evidence 201(d), Plaintiff, KIMBERLY BEAGLE

21 (hereinafter, BEAGLE ) requests that the court take judicial notice of the following documents:

22 1. Portions of the Department of Fair Employment and Housing's (DFEH) file  
23 concerning BEAGLE'S complaints against RITE AID, Case #E200506A1323-00-S, including:  
24 (a) BEAGLE'S DFEH Amended Complaint of Discrimination (signed January 29, 2007 /  
25 Amended File Date February 7, 2006) along with BEAGLE'S January 28, 2007 letter to DFEH  
26 employee, Jackie Jones. A true and correct copy of BEAGLE'S DFEH Amended Complaint of

27

28

1 Discrimination with BEAGLE'S January 28, 2007 letter to Jackie Jones is attached hereto as  
2 Exhibit A.

3 (b) The DFEH'S Case Diary Notes for Case #E200506A1323-00-S. A true and correct  
4 copy of the Department of Fair Employment and Housing's Case Diary Notes for Case  
5 #E200506A1323-00-S are attached hereto as Exhibit B.

6 (c) BEAGLE'S DFEH Complaint of Discrimination (filed June 9, 2006). A true and  
7 correct copy of BEAGLE'S DFEH Complaint of Discrimination (filed June 9, 2006) is attached  
8 hereto as Exhibit C.

9 (d) BEAGLE'S March 4, 2007 written statement. A true and correct copy of BEAGLE'S  
10 March 4, 2007 written statement is attached hereto as Exhibit D.

11 **DATED:** May 14, 2008

12 **MAYALL, HURLEY, KNUTSEN, SMITH & GREEN**

13  
14 By /s/ Mark S. Adams  
15 MARK S. ADAMS

## **EXHIBIT A**

## EMPLOYMENT

COMPLAINT OF DISCRIMINATION UNDER  
THE PROVISIONS OF THE CALIFORNIA  
FAIR EMPLOYMENT AND HOUSING ACT

DFEH # E200506A1323-00-s

EEOC # N/A

If dual-filed with EEOC, this form may be affected by the Privacy Act of 1974.

## CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING and EEOC

COMPLAINANT'S NAME (indicate Mr. or Ms.)

BEAGLE, KIMBERLY (MS.)

ADDRESS

3430 Hillras

TELEPHONE NUMBER (INCLUDE AREA CODE)

707-834-8091

CITY

Fortuna

STATE

CA

ZIP

95540

COUNTY

Humboldt

COUNTY CODE

023

NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, OR STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME:

NAME

RITE AID

ADDRESS

725 Fortuna Blvd.

TELEPHONE NUMBER (INCLUDE AREA CODE)

707-725-9314

CITY

Fortuna

STATE

CA

ZIP

95540

COUNTY

Humboldt

COUNTY CODE

023

CAUSE OF DISCRIMINATION BASED ON (CHECK APPROPRIATE BOX(ES))

RACE  SEX  DISABILITY  RELIGION  NATIONAL ORIGIN/ANCESTRY  DENIAL OF FAMILY/MEDICAL LEAVE  SEXUAL ORIENTATION  
 COLOR  AGE  MARITAL STATUS  MEDICAL CONDITION (cancer or genetic characteristics)  OTHER (SPECIFY) \_\_\_\_\_

NO. OF EMPLOYEES/MEMBERS  
CODE

50,000

DATE MOST RECENT OR CONTINUING DISCRIMINATION

RESPONDENT

TOOK PLACE (month, day, and year) 07/06/05

59

THE PARTICULARS ARE:

## AMENDED

- I. During the course of my employment as a Sales Clerk at Rite Aid, I was sexually harassed by Supervisor Chris Young. The last incident occurred on or about July 6, 2005.
- II. I believe I was sexually harassed, which is discrimination on the basis of sex, female. My belief is based on the following:
  - A. From approximately February 1, 2005 to July 6, 2005, I was sexually harassed by Supervisor Chris Young. The harassment was of a verbal and physical nature. The harassment created a hostile work environment.
  - B. The unwanted sexual advances were witnessed by several co-workers. (names on file with DFEH).
  - C. Mr. Young admitted to the harassment. In August 2005, I believe that he may have been terminated after an investigation of harassment allegations by me and other co-workers.
  - D. In July 2005, I resisted the sexual harassment of Chris Young, by telling him, "you can't do that", after he shoved my head between his legs.
  - E. In July 2005, I reported the sexual harassment of Chris Young, to the store Manager Leon Comerer.

MAILED FOR SIGNATURE January 25, 2007

 I also want this charge filed with the Federal Equal Employment Opportunity Commission (EEOC).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge except as to matters stated on my information and belief as to those matters I believe it to be true.

Dated

1-29-07

FEB 7-2007

K Beagle

FEB - 2007

COMPLAINANT'S SIGNATURE

BY: SAN FRANCISCO DISTRICT OFFICE

At Fortuna

City

BY: SAN FRANCISCO DISTRICT OFFICE

DFEH-300-01 (12/99)

SF:TB:pw

DATE FILED: June 9, 2006

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

AMENDED DATE: Feb 7, 2007 STATE OF CALIFORNIA

Dear Jackie

I would like to add that the  
Supervisors at Rite Aid continued to  
harrass me after Mr. Young admitted  
to wrong doing and was fired. When  
I brought my sick leave papers in  
to be signed after being diagnosed  
with Post Traumatic Stress Disorder  
Cinda - supervisor ~~she~~ literally threw the  
papers in my face and accused me  
of forging the Doctors signature.  
I was denied sick pay. I did report this to her  
They have spread lies about me  
throughout the community that have  
been damaging to me and to my  
children.

128.07

K. Beyle

## **EXHIBIT B**

Case #: E200506A1323 -00-s      Federal No.

Complainant BEAGLE, KIMBERLY  
 Respondent RITE AID

Complainant Representative      Respondent Contact Person

Name      Name Annmarie Liermann

Title      Title Esq.

Firm      Company Kelly, Herlihy & Klein LLP

Address      Address 44 Montgomery St., Ste. 2500

City      City San Francisco

State Zip      State CA Zip 94104

Phone      Fax      Phone 415-951-0535      Fax 415-391-7808

Complaint Filed 06/09/2006      PDS 08/11/2006

Served/Opening Letter 06/22/2006      Return Receipt Received/Green Card 06/28/2006

150-Day Letter Sent 11/15/2006      Response Received 10/03/2006

240-Day Letter Sent / /      Response Received Extension Date / /

365-Day Letter Sent / /      Response Reviewed w/Complainant / /

CP Address/Change of Address      14-day letter Sent / /

Address 3430 HILLRAS      To Mediation / /      To Legal / /  
 City FORTUNA      Returned / /      Returned / /  
 State CA Zip 95540-      HUD Letter / /      Type of Letter  
 Home Phone 707-834-8091  
 Msg Phone

Total Case Processing Time 8.50

DATE	CASE ACTIVITY
05/10/2006	Intake Interview User ID: ABULLIVT      Time: 2.00
06/26/2006	Complaint Served User ID: AWILLIAMP      Time: 0.50
08/11/2006	pds User ID: ABULLIVT      Time: 0.50
08/11/2006	Rp said she will have response in by next week User ID: ABULLIVT      Time: 0.50
08/11/2006	pds User ID: ABULLIVT      Time: 0.50

DATE	CASE ACTIVITY		
08/11/2006	pds	User ID: ABULLIVT	Time: 0.50
08/24/2006	pds	User ID: ABULLIVT	Time: 0.50
08/29/2006	pds	User ID: ABULLIVT	Time: 0.50
08/31/2006	witness called	User ID: ABULLIVT	Time: 0.50
08/31/2006	witness called	User ID: ABULLIVT	Time: 0.25
08/31/2006	called rp/cp about PDS	User ID: ABULLIVT	Time: 0.50
09/07/2006	messge for cps contact	User ID: ABULLIVT	Time: 0.25
09/08/2006	pds	User ID: ABULLIVT	Time: 0.50
09/08/2006	settlement	User ID: ABULLIVT	Time: 0.50
12/08/2006	prepare case for transfer	User ID: ABULLIVT	Time: 0.50

## Case Time Break Down

Intake	2.00
Investigation	2.00
Negotiation/Settlement	4.00
Caseload Management	0.00
Report Writing/Case Closure	0.00
Case Consultation	0.00
Clerical Activity	0.50

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING  
CASE DIARY

Case #: E200506A1323 -00-s      Federal No.

Complainant BEAGLE, KIMBERLY  
Respondent RITE AID

Complainant Representative      Respondent Contact Person

Name      Name Annmarie Liermann

Title      Title Esq.

Firm      Company Kelly, Herlihy & Klein LLP

Address      Address 44 Montgomery St., Ste. 2500

City      City San Francisco

State Zip      State CA Zip 94104

Phone      Fax      Phone 415-951-0535      Fax 415-391-7808

Complaint Filed 06/09/2006      PDS 08/11/2006

Served/Opening Letter 06/22/2006      Return Receipt Received/Green Card 06/28/2006

150-Day Letter Sent 11/15/2006      Response Received 10/03/2006

240-Day Letter Sent 02/05/2007      Response Received Extension Date //

365-Day Letter Sent //      Response Reviewed w/Complainant 09/08/2006

CP Address/Change of Address      14-day letter Sent 02/20/2007

Address 3430 HILLRAS      To Mediation //      To Legal //

City FORTJNA      Returned //      Returned //

State CA Zip 95540-      HUD Letter //      Type of Letter

Home Phone 707-834-8091

Msg Phone

Total Case Processing Time 44.50

## DATE      CASE ACTIVITY

05/10/2006      intake Interview  
User ID: ABULLIVT      Time: 2.00

06/26/2006      Complaint Served  
User ID: AWILLIAMP      Time: 0.50

08/11/2006      pds  
User ID: ABULLIVT      Time: 0.50

08/11/2006      Rp said she will have response in by next week  
User ID: ABULLIVT      Time: 0.50

08/11/2006      pds  
User ID: ABULLIVT      Time: 0.50

Continued Case Diary: E200506A1323

Page 2

DATE	CASE ACTIVITY		
08/11/2006	pds User ID: ABULLIVT	Time:	0.50
08/24/2006	pds User ID: ABULLIVT	Time:	0.50
08/29/2006	pds User ID: ABULLIVT	Time:	0.50
08/31/2006	witness called User ID: ABULLIVT	Time:	0.50
08/31/2006	witness called User ID: ABULLIVT	Time:	0.25
08/31/2006	called rp/cp about PDS User ID: ABULLIVT	Time:	0.50
09/07/2006	messge for cps contact User ID: ABULLIVT	Time:	0.25
09/08/2006	pds User ID: ABULLIVT	Time:	0.50
09/08/2006	settlement User ID: ABULLIVT	Time:	0.50
12/08/2006	prepare case for transfer User ID: ABULLIVT	Time:	0.50
12/20/2006	left voice message with cp User ID: AJONESJ	Time:	0.25
12/22/2006	telephone message to cp to go over response User ID: AJONESJ	Time:	0.25
12/27/2006	voice message to cp User ID: AJONESJ	Time:	0.25
12/27/2006	voice message to cp about going over the response User ID: AJONESJ	Time:	0.25
12/29/2006	sent a letter to cp requesting additional information User ID: AJONESJ	Time:	0.25
01/02/2007	reviewed cp's rebuttal User ID: AJONESJ	Time:	1.50
01/02/2007	letter to cp requesting additional information User ID: AJONESJ	Time:	0.25
01/11/2007	telephone call to cp to get update on additional information User ID: AJONESJ	Time:	0.25
01/11/2007	voce message to respondents attorney User ID: AJONESJ	Time:	0.25

Continued Case Diary: E20C506A1323

Page 3

## DATE CASE ACTIVITY

01/16/2007	voice message to respondent's attorney User ID: AJONESJ	Time: 0.25
01/16/2007	talked to respondent's attorney requesting additional information User ID: AJONESJ	Time: 0.75
01/16/2007	sent a letter to respondent's attorney requesting additional information User ID: AJONESJ	Time: 0.25
01/16/2007	voice message to cp User ID: AJONESJ	Time: 0.25
01/16/2007	v/m for rep. attorney User ID: AJONESJ	Time: 0.25
01/16/2007	talked to rep attorney User ID: AJONESJ	Time: 0.25
01/16/2007	processed and mailed request for add'l information User ID: AJONESJ	Time: 1.00
01/16/2007	v/m for cp User ID: AJONESJ	Time: 0.25
01/18/2007	voice message to cp to return call User ID: AJONESJ	Time: 0.25
01/18/2007	voice message to respondent's attorney User ID: AJONESJ	Time: 0.25
01/18/2007	v/m for cp User ID: AJONESJ	Time: 0.25
01/18/2007	v/m for respondent's rep User ID: AJONESJ	Time: 0.25
01/19/2007	attempt to contact cp's witness User ID: AJONESJ	Time: 0.25
01/19/2007	interview witness for respondent User ID: AJONESJ	Time: 1.25
01/19/2007	received cp's witness information User ID: AJONESJ	Time: 0.25
01/19/2007	received and reviewed additional information from respondent's attorney User ID: AJONESJ	Time: 2.25
01/19/2007	v/m to cp's witness User ID: AJONESJ	Time: 0.25
01/19/2007	interviewed witness User ID: AJONESJ	Time: 2.25
01/19/2007	received witness for cp User ID: AJONESJ	Time: 0.25

Continued Case Diary: E200506A1323

Page 4

## DATE CASE ACTIVITY

01/22/2007	attempt made to contact cp's witness User ID: AJONESJ	Time: 0.25
01/22/2007	spoke with cp's witness User ID: AJONESJ	Time: 0.25
01/22/2007	made an attempt to contact cp's witness User ID: AJONESJ	Time: 0.25
01/22/2007	spoke with witness for respondent User ID: AJONESJ	Time: 0.50
01/22/2007	spoke to respondent's attorney regarding additional information User ID: AJONESJ	Time: 0.25
01/22/2007	spoke with cp's witness User ID: AJONESJ	Time: 1.25
01/22/2007	left voice message to cp User ID: AJONESJ	Time: 0.25
01/22/2007	attempt to contact witness User ID: AJONESJ	Time: 0.25
01/22/2007	v/m to witness User ID: AJONESJ	Time: 0.25
01/22/2007	v/m to witness User ID: AJONESJ	Time: 0.25
01/22/2007	interviewed witness User ID: AJONESJ	Time: 0.50
01/22/2007	talked to respondent rep User ID: AJONESJ	Time: 0.50
01/22/2007	interviewed witness User ID: AJONESJ	Time: 1.00
01/22/2007	v/m to cp User ID: AJONESJ	Time: 0.25
01/23/2007	received and reviewed additional info User ID: AJONESJ	Time: 1.00
01/25/2007	sent amended complaint to cp User ID: AJONESJ	Time: 0.25
01/25/2007	left voice message to cp's witness User ID: AJONESJ	Time: 0.25
01/25/2007	interview cp's witness User ID: AJONESJ	Time: 1.00
01/25/2007	v/m to witness User ID: AJONESJ	Time: 0.25

DATE	CASE ACTIVITY		
01/25/2007	interviewed witness User ID: AJONESJ	Time:	0.75
01/30/2007	received v/m from witness User ID: AJONESJ	Time:	0.25
02/07/2007	received and reviewed cp's amended complaint User ID: AJONESJ	Time:	0.25
02/16/2007	process and mailed amended complaint to cp User ID: AJONESJ	Time:	0.75
02/20/2007	reviewed cp rebuttal User ID: AJONESJ	Time:	2.00
02/20/2007	14-day letter processed and sent User ID: AJONESJ	Time:	2.25
02/26/2007	consultant w/cp User ID: AJONESJ	Time:	1.25
02/27/2007	cp respond to 14-day letter User ID: AJONESJ	Time:	0.50
03/06/2007	received and reviewed additional information from cp User ID: AJONESJ	Time:	1.00
03/12/2007	re'd response received to 14-day letter User ID: AJONESJ	Time:	0.75
03/12/2007	t/c to witness in response to rebuttal of 14-day letter User ID: AJONESJ	Time:	0.50
03/12/2007	t/c to attorney of respondent User ID: AJONESJ	Time:	0.25
03/12/2007	sent letter of thanks to witness of cp User ID: AJONESJ	Time:	0.25
03/12/2007	talked to respondent rep User ID: AJONESJ	Time:	0.25
03/12/2007	interviewed witness User ID: AJONESJ	Time:	1.00
03/12/2007	process letter to cp's therapist User ID: AJONESJ	Time:	0.25
03/12/2007	interviewed witness User ID: AJONESJ	Time:	0.50

Case Diary: E200506A1323

## Case Time Break Down

Intake	2.00
Investigation	38.00
Negotiation/Settlement	4.00
Caseload Management	0.00
Report Writing/Case Closure	0.00
Case Consultation	0.00
Clerical Activity	0.50

## **EXHIBIT C**

**COMPLAINT OF DISCRIMINATION UNDER  
THE PROVISIONS OF THE CALIFORNIA  
FAIR EMPLOYMENT AND HOUSING ACT**DFEH # E200506 A-1323-00-s  
EEOC # N/A

If dual-filed with EEOC, this form may be affected by the Privacy Act of 1974.

**CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING and EEOC**

COMPLAINANT'S NAME (Indicate Mr. or Ms.)

Beagle, Kimberly (Ms.)

ADDRESS

3430 Hillras

TELEPHONE NUMBER (INCLUDE AREA CODE)

(707) 725-1634

CITY

Fortuna

STATE

CA

ZIP

95540

COUNTY

Humboldt

COUNTY CODE

023

NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, OR STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME:

NAME

Rite Aid

ADDRESS

725 Fortuna Blvd.

TELEPHONE NUMBER (INCLUDE AREA CODE)

(707) 725-9314

CITY

Fortuna

STATE

CA

ZIP

95540

COUNTY

Humboldt

COUNTY CODE

023

CAUSE OF DISCRIMINATION BASED ON (CHECK APPROPRIATE BOX[ES])

RACE  SEX  DISABILITY  RELIGION  NATIONAL ORIGIN/ANCESTRY  DENIAL OF FAMILY/MEDICAL LEAVE  SEXUAL ORIENTATION  
 COLOR  AGE  MARITAL STATUS  MEDICAL CONDITION (cancer or genetic characteristics)  OTHER (SPECIFY) \_\_\_\_\_

NO. OF EMPLOYEES/MEMBERS

DATE MOST RECENT OR CONTINUING DISCRIMINATION

RESPONDENT CODE

50,000

TOOK PLACE (month, day, and year) 07/06/05

59

THE PARTICULARS ARE:

- I. During the course of my employment as a Sales Clerk at Rite Aide, I was sexually harassed by Supervisor Chris Young. The last incident occurred on or about July 6, 2005.
- II. I believe I was sexually harassed, which is discrimination on the basis of sex, female. My belief is based on the following:
  - A. From approximately February 1, 2005, to July 6, 2005, I was sexually harassed by Supervisor Chris Young. The harassment was of a verbal and physical nature. The harassment created a hostile work environment.
  - B. The unwanted sexual advances were witnessed by several co-workers. (names on file with DFEH)
  - C. Mr. Young admitted to the harassment. In August 2005, I believe that he may have been terminated after an investigation of harassment allegations by me and other co-workers.
  - D. In July 2005, I resisted the sexual harassment of Chris Young, by telling him, "you can't do that", after he put his face between my legs.

*Young*

## EMPLOYMENT

COMPLAINT OF DISCRIMINATION UNDER  
THE PROVISIONS OF THE CALIFORNIA  
FAIR EMPLOYMENT AND HOUSING ACT

DFEH # E200506 A-1323-00-s

EEOC # N/A

COMPLAINANT'S NAME(S) (indicate Mr. or Ms.)

Beagle, Kimberly (Ms.)

RESPONDENT'S NAME

Rite Aid

THE PARTICULARS ARE:

E. In July 2005, I reported the sexual harassment of Chris Young, to the Store Manager Leon Comerer.

Page 2 of 2

Typed and mailed for signature on 06/24/06

 I also want this charge filed with the Federal Equal Employment Opportunity Commission (EEOC).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge except as to matters stated on my information and belief, and as to those matters I believe it to be true.

Dated 5-31-06At Folsom

City

DFEH-300-01 (06/97)

SF:TB:pw

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

COMPLAINANT'S SIGNATURE

DATE FILED: June 9, 2006

STATE OF CALIFORNIA

## **EXHIBIT D**

3-4-07

In response to the letter I received stating that Rite Aid did nothing wrong and that I engaged in horseplay with Chris Young, I would like to bring to light some facts to dispute these statements.

First of all I did not engage in horseplay with Chris or anyone else at Rite Aid. Rite Aid says my coworkers say different but I challenge them to prove who made these statements and what exactly did they hear or see me do? Also if I did encourage him to do this to me why did they fire him and why wasn't I represented?

After Chris was fired certain members of management and coworkers continued to harass me. In August - Following the attack on me I went to Rite Aid in Fortuna to pick up my Sick Day paperwork. I had been advised by my doctor and union rep. to avoid the distress of going into the store so I sat in the car while my son and friend went in to retrieve the papers. Supervisor

Cinda Hussey came out of the store

to the car with the paperwork which my doctor had signed and began questioning me about the doctors signature saying that it looked suspicious and demanded to know who the doctor was and where he was located. When I stated that the signature was not

Forged and asked her to please give me the papers. She crumpled them up and threw them through the window at me hitting me in the face. Matt Hudson was a witness. I also reported it to my union rep. Eddie Boehm.

A former employee, Kathy Fier, told me that Leon Comer - the store manager at the time of this incident told the employees at the store and at the Eureka store that Rite Aid was forcing him to quit because I was pressing sexual harassment charges against him as well. This caused all of management and co-workers to turn against me. I never threatened him in any way with harassment charges. You can call Kathy and verify this. Her number is 707-492-9011.

Several of my co-workers showed me support until he was introduced with these lies.

I have been diagnosed with Post Traumatic Stress disorder directly caused by this attack and chain of events. A fact I can prove through my medical records.

This has caused me so much stress and anxiety and humiliation.

The fact that my union rep advised me not to return to work at

the Fortune Store because of the hostility. Phaves the ongoing harassment against me.

I have outstanding medical bills including physical therapy and counseling that Rite Aid is responsible for. I feel Rite Aid should take care of these bills and ongoing therapy. I still suffer from extreme anxiety and depression.

In conclusion I would like to say that I enjoyed my work at Rite Aid. I was employed for over seven years. If Rite Aid is willing to take care of my medical bills and therapy as well as regenerate my employment at the Eureka Store I would find this an acceptable solution.

Sincerely K. Beagle